

# pure water membrane element warranty and three-year prorated performance guarantee

## warranty terms

Seller warrants the spiral wound pure water membrane elements (the “Elements”) provided that the Elements are exclusively used at all times in accordance with Seller’s recommended design and operating instructions and provided that the Buyer complies with the Operating Conditions and Buyer’s Responsibilities as referenced below.

The Seller warrants the Elements to be free from defects in material and workmanship for twelve (12) months from the earlier of (the point in time below being the “Start of the Warranty Period”):

1. *Wet Elements*
  - a. First use in system
  - b. Three (3) months after delivery to the Buyer FCA (Incoterms 2010)
2. *Dried or Drip/dry Elements*
  - a. First use in system;
  - b. Six (6) months after delivery to the Buyer FCA (Incoterms 2010)

In addition to the aforementioned, in relation to the Elements purchased by the Buyer from the Seller with Pure Water RO Systems (including BEV Series, and MUNI Series), the Seller provides a thirty-six (36) month prorated performance guarantee for its Elements from the Start of the Warranty Period. During the prorated period, the Seller guarantees that when operated within the storage and operating conditions stated in this warranty document under standard test conditions (see the Element specification fact sheet) and after an appropriate cleaning cycle, the permeate flow rate of the Elements shall be at least seventy percent (70%) of the minimum value stated on the specification fact sheet and the salt passage shall not exceed twice the maximum value stated on the specification fact sheet (the “Prorated Performance Guarantee”).

## buyer’s responsibilities

In addition to the Buyer’s Responsibilities in other documents that may apply, Buyer shall also comply with the following:

### Storage Conditions

1. Until first use all Elements must be stored in their original packaging and original packaging conditions (including but not limited to original vacuum sealed, bags intact)
2. All dry, dried or drip/dry membrane elements (excluding cellulosic elements) may be stored no longer than twelve (12) months at ambient temperatures less than 86°F (30°C) and greater than 32°F (0°C).

3. All wet membrane elements shipped from any SUEZ facility must be stored in a cool dry location out of direct sunlight or artificial light at temperatures under 86°F (30°C) and greater than 32°F (0°C) no longer than six (6) months.

For cellulosic membrane Elements, dry or wet:

1. Stored in a cool dry location out of direct sunlight or artificial light at ambient temperatures less than 86°F (30°C) and greater than 32°F (0°C) for no longer than three (3) months.

### **operating conditions**

The warranties herein and applicable in any other document are strictly subject to the Buyer complying at all times with the following operating conditions (jointly the "Operating Conditions"), and become void if the Operating Conditions are not met.

- a. The feed water to the Elements should be free of oil, grease, colloidal, particulate matter or biological growth;
- b. The feed water to the Elements should be free of ozone, permanganate, hexavalent chromium, free chlorine, hypochlorous acid, hypochlorite and other oxidizing agents harmful to the Elements;
- c. The Elements shall be operated so that temperature, pressure, pH, Feed SDI15, turbidity and other ambient and operating parameters at no time are outside the range described in the operations and maintenance manuals of the Elements;
- d. The Elements shall be maintained in good, clean condition. When the normalized permeate flow rate of the Elements have declined by ten per cent (10%), the Elements must be cleaned using Seller's accepted cleaning procedure;
- e. The membrane system design where Elements are installed shall be consistent with sound engineering practice, and the Elements shall not at any time be exposed to water hammer or permeate backpressure. Permeate backpressure is here defined as a positive value of the permeate static pressure minus the concentrate static pressure;
- f. Only Seller's approved cleaners, biocides, dispersants, or other chemicals may be used with the Elements. The Buyer is responsible for knowing the membrane element material and for ensuring that chemicals harmful to the membrane or material are never in contact with the Elements;
- g. The operating parameters and system performance of the membrane systems where the Elements are used shall be routinely 1) recorded, 2) normalized, 3) reviewed and 4) filed in an operating data log-sheet in an orderly format ((operating parameters shall include, at a minimum, feed stream temperature and pH, feed stream and operating pressures, feed conductivity, dates, durations) and chemicals used for system cleaning);
- h. In the event of an Element warranty claim, the collected data (including that in section f and g ) above shall be made available to the Seller upon request;
- i. Upon request, the Buyer shall allow Seller's representative to visit and examine the equipment and operating procedures where the Elements under warranty are used.

### **warranty claim procedure**

Any claim for breach of these warranties must be promptly notified in writing and Buyer shall make the defective item available to the Seller as per the below procedure, or the claim will be void.

The Buyer contacts either its Seller Sales or Customer Care Representative to complete a Returned Goods Authorization (the "RGA") form. Upon receipt of an RGA number and product return instructions, Buyer ships the Elements freight prepaid to the Seller's designated facility c/o the Quality Assurance department. Elements must be kept damp at all times and must be clean and bagged in a watertight bag before returning. The Seller has the option of making inspections and tests of the alleged defective Elements and the membrane system where the elements are or were used. In addition, the Seller may request Buyer to perform such inspections or tests and forward the

results thereof to Seller, or request the Buyer to return all or some of the Elements to the Seller for warranty claim evaluation.

If during inspection of the membrane system at Buyer's site, the Element failure is determined to be from a cause other than breach of warranty in this document, the Buyer shall pay to Seller a fee of USD 500.00 (five hundred) per day plus all direct expenses incurred by Seller's representatives in connection with any inspection and testing of such Elements and the membrane system. Buyer hereby agrees that the real costs for the Seller will be difficult to measure and that the above stated daily amount plus all direct expenses incurred by Seller's representatives is reasonable, and that it is in lieu of all such actual costs and not as a penalty.

Should the Seller determine that the returned Elements perform as warranted the Elements will be returned to the Buyer freight collect and the cost associated with any membrane analysis and diagnostic work will be levied against the Buyer.

## **repairs and replacement**

Seller's sole responsibility and Buyer's exclusive remedy arising out of or relating to the Element or any breach of these warranties and guarantees is limited to repair or (at Seller's option) replacement of defective Elements. The Seller's total liability shall not exceed the replacement value of the Elements that do not meet the warranties stated herein. Replacement value is the ex-works Element price current at the time of replacement. Elements replaced as a consequence of a defect in material or workmanship are allotted the full replacement price, and for the Prorated Performance Guarantee are credited at 1/36 (one thirty-sixth) per month of remaining Prorated Performance Guarantee. Replacements are limited to the quantity of Elements required to return the system to the level of guaranteed performance. The repaired or replaced elements under the Prorated Performance Guarantee will be shipped to the Buyer prepaid, and carry the same Prorated Performance Guarantee for the outstanding months. For the sake of clarity repair or replacement of defective Elements shall not extend or renew the applicable warranty period or Prorated Performance Guarantee period.

## **exclusive warranty**

Notwithstanding anything else contained in any other documents (including the sale agreement by which the Element has been sold to the Buyer and/or any priority of documents provision), as far as the Elements are concerned, this warranty document shall prevail over any conflicting terms.

Unless otherwise expressly stipulated in a sale agreement by which the Element has been sold to the Buyer, Seller gives no warranty or guarantee as to process results or performance of the Element, including but not limited to product quality, flow, production, capacity, membrane life, chemical consumption, regulatory compliance or energy consumption.

THE WARRANTIES AND REMEDIES IN THIS WARRANTY DOCUMENT ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES AND REMEDIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **DISCLAIMER AND LIMITATION ON LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCTION, LOSS OF USE OF EQUIPMENT OR SERVICES OR ANY ASSOCIATED EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, COST OF REPLACEMENT WATER OR POWER, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THE PERFORMANCE OR ACTUAL OR ALLEGED BREACH OF THE AGREEMENT, REGARDLESS OF WHETHER A CLAIM IS BASED IN CONTRACT (INCLUDING WARRANTY OR INDEMNITY), EXTRA-CONTRACTUAL LIABILITY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), STATUTE, EQUITY OR ANY OTHER LEGAL THEORY.

## assignment

Buyer is not entitled to extend or transfer this warranty to any other party, without the prior written consent of Seller.

## definitions

The following terms shall have the meaning set forth below when used in this warranty document:

"Buyer" means the party purchasing the Equipment from the Seller.

"Equipment" means the spiral wound membrane elements sold by the Seller to the Buyer and any membrane system where the Elements are installed.

"Seller" means a business component of, or legal entity within the Water Technologies & Solutions business of SUEZ which is selling Equipment.